

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

JEFFREY NEAL CUDDINGTON,)	
)	
Movant,)	
)	CIVIL ACTION NO.
v.)	6:18-CV-019-C-BL
)	CRIMINAL NO.
UNITED STATES OF AMERICA,)	6:16-CR-028-C-BL
)	
Respondent.)	

ORDER

By prior Order dated July 30, 2018, the Court found that Movant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody required an evidentiary hearing to make factual findings related to Movant's claims that his trial counsel failed to timely file a requested notice of appeal. The matter was referred to the United States Magistrate Judge for an evidentiary hearing on Movant's claim that his trial counsel failed to file a notice of appeal as instructed. The Magistrate Judge appointed counsel to represent Movant at the hearing. Following a hearing on the matter, the Magistrate Judge filed his Report and Recommendation on February 14, 2019, in which he recommends that the Court: (1) deny Ground Eight of the Movant's Motion because Movant has not shown by a preponderance of the evidence that he or his agents expressly requested trial counsel to file an appeal, but (2) grant Ground Seven because Movant has demonstrated that counsel breached the constitutionally-imposed duty to consult and the failure to consult prejudiced Movant.

The Respondent filed a timely objection after obtaining an extension to do so. The Court finds that Respondent's Objections should be **OVERRULED**. Movant filed a "Response" to the

Report and Recommendation, which the Court construes as an Objection in Part. The Court finds that Movant's Objection in Part should be **OVERRULED**. The Court adopts the findings and conclusions of the Magistrate Judge contained in the Report and Recommendation.

Movant's claim under Ground Eight is **DENIED**. However, Movant's claims under Ground Seven is **GRANTED**. The Court will reenter the Judgment of conviction in Movant's criminal case and permit a timely appeal in the above-styled and -numbered criminal action.

All remaining claims asserted in Movant's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody are **DENIED** for the reasons argued in Respondent's Response thereto, filed July 23, 2018.

Pursuant to Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), this Court finds that a certificate of appealability should be **DENIED**. For the reasons set forth herein, as well as those contained in the Court's June 19, 2018 Order, Movant has failed to show that a reasonable jurist would find: (1) this Court's "assessment of the constitutional claims debatable or wrong," or (2) "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

SO ORDERED,

Dated this 26th day of March, 2019.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE